

5246. Adulteration of horse beans. U. S. * * * v. Adolph Koshland. Plea of not guilty. Tried to the court and a jury. Verdict of guilty. Fine, \$150. (F. & D. No. 7645. I. S. Nos. 2511-1, 2515-1, 3507-1.)

On October 2, 1916, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Adolph Koshland, San Francisco, Cal., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about August 26, 1915, and December 18, 1915, and transported from the State of California into the State of New York, of quantities of horse beans which were adulterated.

Adulteration of the article was alleged in the information for the reason that it consisted in whole or in part of a filthy, putrid, and decomposed vegetable substance.

On October 14, 1916, the defendant entered a plea of not guilty to the information. On January 5, 1917, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the jury was charged as follows by the court (Dooling, D. J.):

Gentlemen of the jury: the defendant is charged in an information, filed October 2nd, 1916, with a violation of the Act of Congress of June 30th, 1906, known as the Food and Drugs Act.

It is charged that the defendant did unlawfully ship and deliver for shipment from the City and County of San Francisco, State of California, to the city of New York, State of New York, with instructions to notify James Chieves & Company, a certain consignment, to wit, six hundred and twelve sacks containing an article designed and intended to be used as an article of food, to wit, horse beans, which were, then and there, unlabeled; that said article of food, when shipped and delivered for shipment as aforesaid, was then and there adulterated in that it consisted in whole or in part of a filthy, putrid, and decomposed vegetable substance.

The second count of the information charges a violation of the same statute, at the same time and place the consignment therein being seven hundred and seven sacks of horse beans, which were adulterated in the same manner as the beans charged in the first count.

In the third count it is charged in the same manner as aforesaid, that at the same time and place a consignment of horse beans, nine hundred and twelve sacks labeled, marked, and branded "Monte 418" "20567" and "A", was shipped unlawfully, and also were adulterated. The act provides:

"Any person who shall ship or deliver for shipment from any state or territory to any other state or territory any article adulterated within the meaning of the act, shall be guilty of a misdemeanor."

If as much as 25 per cent of the beans in question contained weevil, larvae or grubs, such beans would be filthy within the meaning of the statute.

The act nowhere requires proof of intention by the use of the words knowingly, wilfully, or like words. It would be destructive of the act itself and nullify it entirely to allow the intent of the person violating it to be considered as a defense; it is therefore unnecessary to prove that the defendant had knowledge that the article shipped by him was obnoxious to some provision of the act. He is charged with a knowledge of the condition of the article.

The fact that the defendant did not intend to violate the law is not a question here. The question is, was the law in fact violated.

For the purpose of the act an article shall be deemed to be adulterated: if it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance. The shipment of the beans here is admitted, and the question for you to determine is whether they were adulterated within the meaning of the act.

The food and drugs act provides that:

"Any person who shall ship or deliver for shipment from any state or territory to any other state or territory any article adulterated within the meaning of the act, shall be guilty of a misdemeanor."

The burden of proof in this case is upon the Government, and it is not necessary for a defendant to offer evidence in disproof of any allegation of the information until the facts proven, if unrefuted by him, are sufficient to

establish his guilt, beyond a reasonable doubt. The law presumes the innocence of a defendant, and that presumption abides with him through the trial and extends to every fact necessary to constitute the offense, and continues until his guilt is finally established by the evidence beyond a reasonable doubt, and determined by your verdict. A reasonable doubt arises when the jury, after a fair and impartial consideration of all the evidence in the case, are unable to say that they feel an abiding conviction to a moral certainty of the truth of the charge; a certainty which satisfies the reason and directs the understanding of those who are bound to act conscientiously upon it. If, therefore, after a full consideration of all the evidence presented, the jury entertain such a doubt as to any fact or element necessary to constitute the offense charged, they must resolve that doubt in his favor by an acquittal. That it to say, if you have any doubt as to whether the beans were shipped by him, or any doubt as to whether they were adulterated within the meaning of the statute, you must give the benefit of that doubt to the defendant. But you will not understand from this that the Government is called upon to make a case free from any possible doubt, that is, to prove the defendant's guilt to an unassailable demonstration. Such is not the law, for such proof is rarely obtainable in dealing with human transactions. In other words, the doubt which will justify your hesitation must be based in reason and arise upon the evidence and not consist of a mere fanciful hesitation growing out of your sympathies, or based upon something other than a fair and impartial consideration of the evidence in the case.

The purpose of this act is to protect the public from the manufacture, sale, or transportation of adulterated or misbranded [foods and drugs] or [those] below a certain standard. The burden is upon the seller or shipper to know the condition of the article which he ships.

It takes the concurrence of all of you gentlemen to agree upon a verdict, and when you have so agreed you will have such verdict signed by your foreman and returned into court.

(The jury returned at 4:20 o'clock P. M., into court for further instructions.)

THE COURT: Q. Gentlemen, have you reached a verdict?

A JUROR. A. We would like to have the instructions re-read.

THE COURT. I have stated the contents of the information which you have in your possession. The Food and Drugs Act provides that:

"Any person who shall ship or deliver for shipment from any state or territory to any other state or territory any article adulterated within the meaning of the act, shall be guilty of a misdemeanor."

For the purpose of the act an article shall be deemed to be adulterated: if it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance.

The shipment of the beans here is admitted, and the question for you to determine whether they were adulterated within the meaning of the act.

It is the opinion of the Court that if as much as 25 per cent of the beans in question contained weevil, larvae, or grubs, such beans would be filthy within the meaning of the statute.

The act nowhere requires proof of intention by the use of the words knowingly, wilfully, or like words. It would be destructive of the act itself and nullify it entirely to allow the intent of the person violating it to be considered as a defense; it is therefore unnecessary to prove that the defendant had knowledge that the article shipped by him was obnoxious to some provision of the act. He is charged with a knowledge of the condition of the article.

The fact that the defendant did not intend to violate the law is not a question here. The question is, was the law violated?

You have been instructed that the burden of proof is upon the Government, and it is not necessary for a defendant to offer evidence in disproof of any allegation of the information until the facts proven, if unrefuted by him, are sufficient to establish his guilt, beyond a reasonable doubt. The law, presumes the innocence of a defendant, and that presumption abides with him throughout the trial and extends to every fact necessary to constitute the offense, and continues until his guilt is finally established by the evidence beyond a reasonable doubt, and determined by your verdict. But you will not understand from this that the Government is called upon to make a case free from any possible doubt, that is, to prove the defendant's guilt to an unassailable demonstration. Such is not the law, for such proof is rarely obtainable in dealing with human transactions. In other words, the doubt which will justify your

hesitation must be based in reason and arise upon the evidence and not consist of a mere fanciful hesitation growing out of your sympathies, or based upon something other than a fair and impartial consideration of the evidence in the case. The question is whether these goods were shipped in Interstate Commerce by the defendant, and whether they were adulterated within the meaning of the act. If you find they were so shipped you should bring in a verdict of guilty, and if you have any reasonable doubt it is your duty to return a verdict of not guilty.

It requires the concurrence of all of you to agree upon a verdict, and if you so agree you will have such verdict signed by your foreman and returned into court.

Thereupon the jury retired and after due deliberation returned a verdict of guilty, and the court imposed a fine of \$150.

CARL VROOMAN, *Acting Secretary of Agriculture.*